IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

WEDNESDAY, THE 7TH MARCH 2007 / 16TH PHALGUNA 1928

WP(C).No. 7576 of 2007(B)

PETITIONER:

GEORGE PAUL MAMPILLY,
PROPRIETOR, M/S.TIMELY TRADERS
CHALAKKUDY, THRISSUR.

BY ADV. SMT.S.K.DEVI
SRI.K.P.PRADEEP (PAYYANNUR)

RESPONDENTS:
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1. THE SALES TAX OFFICER,
DEPARTMENT OF COMMERCIAL TAXES,
THRISSUR.

2. THE INTELLIGENCE OFFICER, SQUAD NO.1
DEPARTMENT OF COMMERCIAL TAXES, THRISSUR.

3. DEPUTY COMMISSIONER (APPEALS)
DEPARTMENT OF COMMERCIAL TAXES,
ERNAKULAM.

BY GOVERNMENT PLEADER SRI. MUHAMMED RAFIQ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 7576/2007 B

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE NOTICE DT. 15/11/2006.

EXT.P2. COPY OF THE PENALTY ORDER NO. VCR 349/02-03 DT. 8/6/2006.

EXT.P3. COPY OF THE PAYMENT RECEIPT NO. 8455 DT. 19/08/2002 FOR RS. 1,07,770/-

EXT.P4. COPY OF THE ORDER IN APPEAL IN STA 2513/2006 DT. 31/1/2007.

EXT.P5. COPY OF THE ASSESSMENT ORDER NO. 25153922/02-03 DT. 30/12/2006.

EXT.P6. COPY OF THE APPEAL DT. 15/2/2007.

EXT.P7. COPY OF THE STAY ORDER DT. 28/2/2007 IN STA NO. 217/2007.

EXT.P8. COPY OF THE EARLY HEARING PETITION DT. 15/2/2007.

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K.BALAKRISHNAN NAIR, J.

W.P.(C) NO. 7576 OF 2007-B

JUDGMENT

The petitioner has preferred Ext.P6 appeal against Ext.P5 assessment order. The assessment of tax for the year 2002-03 was originally completed on 28.10.2003 and the petitioner paid the tax also. Later, based on Ext.P2 penalty proceedings, the matter was reopened and a fresh assessment was passed. The petitioner submits, he prayed for keeping in abeyance the proceedings for reopening the assessment till the disposal of the appeal filed by him against Ext.P2 penalty proceedings. But, the re-assessment was completed in a hurry and Ext.P5 order was passed. The petitioner points out that soon after the issuance of Ext.P5, his appeal against the penalty proceedings was allowed by Ext.P4 order dated 31.1.2007. In view of the above position, it is submitted that Ext.P5 is unsustainable. Though, the petitioner moved an interlocutory application for stay of Ext.P5, along with Ext.P6 appeal, the same was disposed of by Ext.P7 order, directing the petitioner to pay 50% of the amount. This writ petition is filed, challenging the said interim order Ext.P7.

2. I heard the learned Government Pleader for the respondents also.

In view of Ext.P4 order, the petitioner is entitled to get absolute stay. Accordingly, the collection of tax under Ext.P5 will be deferred till the disposal of Ext.P6 appeal, on the petitioner furnishing security for the amount demanded under Ext.P5. This direction is issued in lieu of the direction in Ext.P7.

The Writ Petition is disposed of as above.

7th March, 2007. K.BALAKRISHNAN NAIR, JUDGE.

Nm/